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Montana's Inheritance Taxes

December 1976

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MONTANA'S INHERITANCE TAXES

A REPORT TO THE

45TH LEGISLATURE

Subcommittee on Taxation

December 1976

Membership
Subcommittee on Taxation

Senator Robert D. Watt, Chairman	Rep. W. Jay Fabrega, Vice-Chairman
Senator Larry Aber*	Rep. Harrison Fagg
Senator William L. Mathers	Rep. Melvin Williams
Senator William Norman	Rep. Dan Yardley

* Replaced Senator Robert Brown, who resigned.

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APPENDIX A. A Bill for an Act Entitled: "An Act to Revise and Update the Montana Inheritance Tax with regard to joint estates and to increase exemptions; amending sections 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, and 91-4453, R.C.M. 1947."

APPENDIX B. Minority Bill. A Bill for an Act Entitled: "An Act to replace the inheritance tax with an estate tax based upon the state credit allowed in the federal estate tax, repealing chapter 44 of Title 91."

I

SUMMARY OF RECOMMENDATIONS

The Subcommittee on Taxation recommends that the 1976 Montana Legislature:

(1) enact a bill to revise and update the Montana inheritance tax with regard to joint estates and to increase exemptions.

A minority report appears in Chapter VII.

II

INTRODUCTION

The Committee on Priorities assigned the Subcommittee on Taxation a "comprehensive study of death and inheritance taxes and related exemptions" in response to a request from the House Taxation Committee, the introduction of SJR 10 calling for a study of the tax, and the debate aroused by SB 27 over higher exemptions.

Legislators calling for the study noted that Montana's inheritance tax laws have remained virtually unchanged since 1923. Since that time, the value of estates has risen sharply, federal laws have changed, and Montana's laws on probate have been radically altered. Legislators requested a general study of the tax to determine whether it still benefited the state and its citizens and to suggest legislation that would reflect the changes in federal and state law.

The Subcommittee on Taxation has studied Montana's inheritance tax at length during the past interim, collecting evidence on the tax's effect from many citizens and soliciting suggested amendments from bankers, lawyers, farmers, and other groups. Testimony from the public was heard at three meetings and draft legislation widely distributed for comment. The Subcommittee sought the aid of the Montana Uniform Probate Code Committee in determining how inheritance tax laws should be amended to reflect the newly enacted Uniform Probate Code.

During the course of its study, the Subcommittee considered a variety of death taxes, including different types of estate taxes and amendments to existing inheritance tax laws. These alternatives are discussed in the attached report. From these alternatives, the majority of the Subcommittee selected a bill which (1) raised exemptions, (2) allowed the primary tax rate to be used for the first $25,000 of the value upon which the tax was due, and (3) lowered the amount of bond minors who wished to defer payment of inheritance taxes until they come into actual possession must post. The bill containing these amendments appears in Appendix A.

Senator Mathers and Representative Fabrega voted against the majority bill in support of a bill that repeals inheritance taxes, leaving only the "pickup" tax or federal credit. Their minority report appears in Chapter VII and the bill is Appendix B.

The Subcommittee and its researcher thank Thomas Stoll and the staff of the Inheritance Tax Division for their help and cooperation in this study.

III

HISTORY AND BACKGROUND

A

Since America's colonial days, death taxes have been levied for two purposes: to raise revenue and to redistribute income by reducing the amount of wealth that could be passed from one generation to another. During the past two centuries, death taxes have evolved in most states from a simple percentage of the value of an estate transferred to collateral heirs into a relatively complex system allowing different exemptions for degrees of kinship and a progressive rate of tax on the transfer of large estates.[1]

Montana's inheritance taxes have followed this national pattern closely. In 1897, the legislature enacted the state's first inheritance taxes in an effort to find a new source of revenue and decrease the state's almost complete dependence on property taxes. The legislature modeled the law upon the New York inheritance tax structure, as did fourteen other states enacting inheritance taxes during the same period. Montana's tax allowed a class exemption of $7,500 for family members -- whether one or many inherited the estate. The rest of the value of the estate was taxed at 1%. Non-family members were allowed a total exemption of $500 and paid 5% on the value of the rest of the estate. The tax was challenged on the grounds that it was not uniform upon the same class of subjects, but the Montana Supreme Court ruled that the tax is on the privilege of receiving the property, and because this privilege is a creature of law rather than a natural right, the legislature may impose any burden it deems fit upon the privilege.[2]

By the turn of the century, national social reformers of the Populist and Granger movements began to argue that the privilege of inheritance should be taxed both heavily and non-uniformly to insure that family fortunes were broken up and economic classes equalized. These reformers proposed a progressive rate of taxation, increasing sharply for large estates and for collateral relatives (relatives other than children). In 1908, the Oklahoma legislature enacted an extreme example of this concept: the tax rate was 100% on medium-size estates, a rate which was quickly challenged in court. Most states adopted a more moderate rate, while keeping the progressive nature of the tax and its varying rates for degrees of kinship. By the 1920's, over thirty states had enacted progressive inheritance tax rates.[3]

Montana followed the national trend in 1921 and 1923 by adopting similar legislation. The legislature used the Wisconsin law as a model, as did thirty-seven other states. This law

set up progressive rates, graduated these rates for direct and collateral heirs, established comprehensive definitions of what was taxable property, allowed exemptions for charities, and centralized administration and collection.[4]

While ideals of social reform may have prompted the adoption of Montana's new law, the increased revenue was a major consideration. Montana agriculture "fell upon evil days" in the years 1917 through 1923 when below normal precipitation and falling prices caused the foreclosure of over 30% of Montana farms. The legislature established a Tax and License Commission to study the state's tax structure and to determine new sources of revenue not dependent on taxing land. In the 1921 legislative session, five new license taxes were imposed and the new inheritance tax passed.[5]

The revised inheritance tax, as amended by the 1923 legislature, administered by the newly-created State Board of Equalization, established the following tax rates and exemptions:

a. $17,500 for widows of the decedent

b. $5,000 for husband

c. $2,000 for children, parents, adopted children

d. $500 for brothers, sisters, nieces, nephews, sons- or daughters-in-law[6]

Inheritances exceeding the exemptions but less than $25,000 were taxed at "primary rates": 1% for classes a, b, and c; 2% for class d; 3% for uncles, aunts, and first cousins; 4% for all others. Heirs paid twice the primary rate for the remaining value of their share between $25,000 and $50,000; three times for the remaining amount between $50,000 and $100,000; and four times the rate for remaining amounts over $100,000. Thus, a son or daughter inheriting a $100,000 taxable share would pay $2,230, compared to $925 under the 1897 law.

Since 1923, Montana's inheritance taxes have changed little. Primary rates were doubled in 1933, as part of the legislature's renewed attempts to supplement property tax revenue dwindling under what the State Board of Equalization termed "unparalleled depressed financial conditions."[7] Exemptions have been increased periodically for spouses and minor children but have remained static for adult children. Today, the rates and exemptions are:

	Exemption	Rate on first $25,000 less exemption	Rate on next $25,000	Rate on next $50,000	Rate on balance
Widow—When decedent died prior to July 1, 1965.	$17,500.00	2%	4%	6%	8%
Widow—When decedent died on or after July 1, 1965.	$20,000.00	2%	4%	6%	8%
Widow—When decedent died on or after July 1, 1974.	$25,000.00	2%	4%	6%	8%
Husband—When decedent died prior to July 1, 1965.	$5,000.00	2%	4%	6%	8%
Husband—When decedent died between July 1, 1965 and July 1, 1969.	$10,000.00	2%	4%	6%	8%
Husband—When decedent died on or after July 1, 1969.	$20,000.00	2%	4%	6%	8%
Husband—When decedent died on or after July 1, 1974.	$25,000.00	2%	4%	6%	8%
Minor Children of Decedent—When decedent died on or after July 1, 1969.	$5,000.00	2%	4%	6%	8%
Lineal ancestor or descendant, adopted child or lineal issue of adopted child.	$2,000.00	2%	4%	6%	8%
Brother or sister of descendant, son's wife or daughter's husband.	$500.00	4%	8%	12%	16%
Uncle, aunt or first cousin.	None	6%	12%	18%	24%
Any other degree of consanguinity, or a stranger in blood or body politic, or corporate.	None	8%	16%	24%	32%

Exemptions shown above apply only in estates located entirely within the State of Montana: where the property is located partly within and partly without Montana exemptions are apportioned as provided in Section 91-4421 R.C.M. 1947.

A son or daughter inheriting a $100,000 taxable share would pay $4,460 under current law.

Like 37 other states, Montana has in addition to its inheritance tax laws, an estate or "pick up" tax. This tax was imposed in 1927 to pick up the maximum amount allowed by the federal government as a state death tax credit. This tax is infrequently collected, since its rates preclude all but large estates. In an estate inherited by a spouse, the "pick up tax" would not apply on taxable shares less than $5,000,000. If four or five children inherited an estate, however, the tax could begin on an estate of $250,000.[8]

B

REVENUE

Although one of the avowed purposes of death taxes is to redistribute wealth from generation to generation, the taxes, most scholars agree, have not served this function. Nationally, the burden of federal estate taxes on large estates is lessened through the use of generation-skipping trusts, gifts before death, and estate-splitting. Even though the federal tax rate rises to 77% on taxable estates over $10 million, family fortunes have remained intact. A recent Urban Institute study found that 5% of the adult American population holds 34% of the total private wealth in the country.[9] State death taxes, with lower tax rates than the federal government, are similarly ineffective in breaking up large estates. The 1966 study of Montana taxation noted that the maximum rate of 8% "minimizes the ability of the Montana tax to achieve this goal, if it is desired."[10] Some scholars of the tax contend that death taxes are no longer designed to redistribute income.[11]

The more important purpose of death taxes, thus, is to produce revenue. Montana's inheritance taxes, as Table I shows, produce a steady, relatively constant amount of revenue which totals about 4% of the state's revenue.[12]

C

ADMINISTRATIVE AND COMPLIANCE COSTS

The administrative costs of inheritance tax to the Department of Revenue is less than 1% of the total tax collected. The cost to the counties is approximately equal. These costs have been reduced slightly in recent years. The 1966 Montana Taxation Task Force rated its costs "low" compared to the 2.1% for personal income taxes, 2.8% for most property taxes, and 9.9% for property taxation of motor vehicles.[13]

The amount Montana citizens pay to comply with the tax is difficult to calculate, since the services lawyers, accountants, and bank officials perform in closing estates include calculating federal estate taxes, discharging the decedent's obligations, and distributing the estate as well as dealing with inheritance taxes. However, a 1965 study estimated the compliance costs for inheritance tax and related matters at about 12% of the total tax collected. Compared to other types of taxes, this compliance cost is high. License taxes and most types of property tax average less than 1%. Only the compliance costs of personal income tax are higher according to the study.[14]

Inheritance taxes have been attacked in several states for the relatively high expenses for citizens and the relatively small amount of revenue generated. Many legislatures have recently adopted uniform probate codes in the hope that uniform and clear laws will decrease the need for attorneys' services. In particular, the Montana legislature in 1975 passed a bill which completely eliminated the need for attorneys or accountants in certain cases. Heirs to estates not requiring the appointment of a personal representative can allow the Department of Revenue to determine the amount of tax due.[15]

Whether these laws will lower compliance costs cannot be determined at present.

D

TAX INCIDENCE

At present, inheritance taxes touch most Montanans lightly and infrequently, if at all. 50% of all estates pay no taxes under present law. As Chart II shows, most heirs who do pay inheritance taxes pay small amounts: 75% of those paying the tax represent only 21% of the total tax paid. Estates valued at over $60,000 comprise only 25% of the total number paying taxes, but their transfer produces 79% of the total inheritance taxes.[16]

The percent of heirs paying inheritance tax has remained relatively constant during the past twenty years, varying from 40% to 50%. Data on the size of estates paying taxes in the past does not, however, exist.[17]

CHART I

INHERITANCE TAXES AS A SOURCE OF REVENUE

Year	Revenue Produced (000)	% of Total State Revenue
1965	$2,504	4.3
1966	2,750	4.3
1967	2,790	4.0
1968	2,976	3.7
1969	3,879	3.6
1970	4,233	4.5
1971	3,645	3.6
1972	4,234	3.3
1973	4,457	3.2
1974	5,660	3.4
1975	5,395	3.3
1976	6,180	3.7
1977	6,369	3.4

CHART II

PERCENT OF TOTAL INHERITANCE TAX PAID

BY VARYING SIZES OF ESTATES

Gross Value of Estate	Percent of Estate	Total Amount of Tax Owed	% of Total Tax Paid
Under $25,000	37%	$14,326.00	4%
$25,000-$60,000	38%	$66,923.00	17%
Over $60,000	25%	$316,364.00	79%
Total	100%	$397,613.00	100%

Charts compiled from returns for August 1974; 191 cases which paid 1/12 of total inheritance tax for the year.
Chart II was compiled by Inheritance Tax Division.

IV

CONCERN ABOUT FEDERAL ESTATE TAXES AND STATE INHERITANCE TAXES

Inheritance and estate taxes have received wide publicity during the past two years. Inflation -- particularly the rise in land prices -- coupled with the fact that the exemptions allowed relatives have not changed in decades has led many people to press for tax reform.

Over 150 bills to increase estate tax exemptions, provide for an alternate means of valuation, and increase the period of payment were introduced in Congress this session. In September the Tax Reform Act of 1976 was passed and signed into law, which increased exemptions, allowed valuation for tax purposes of farm and business property on current use rather than market value, allowed fifteen years for the payment of estate taxes, and imposed taxes on generation-skipping trusts over $250,000.

Citizens in 42 states have called for increased exemptions in their states' death taxes. The movements in Nebraska, South Dakota, and other rural states are particularly active. In March, 1976, Minnesota's legislature passed a bill which doubled exemptions and allowed deferred payment of the tax.[18]

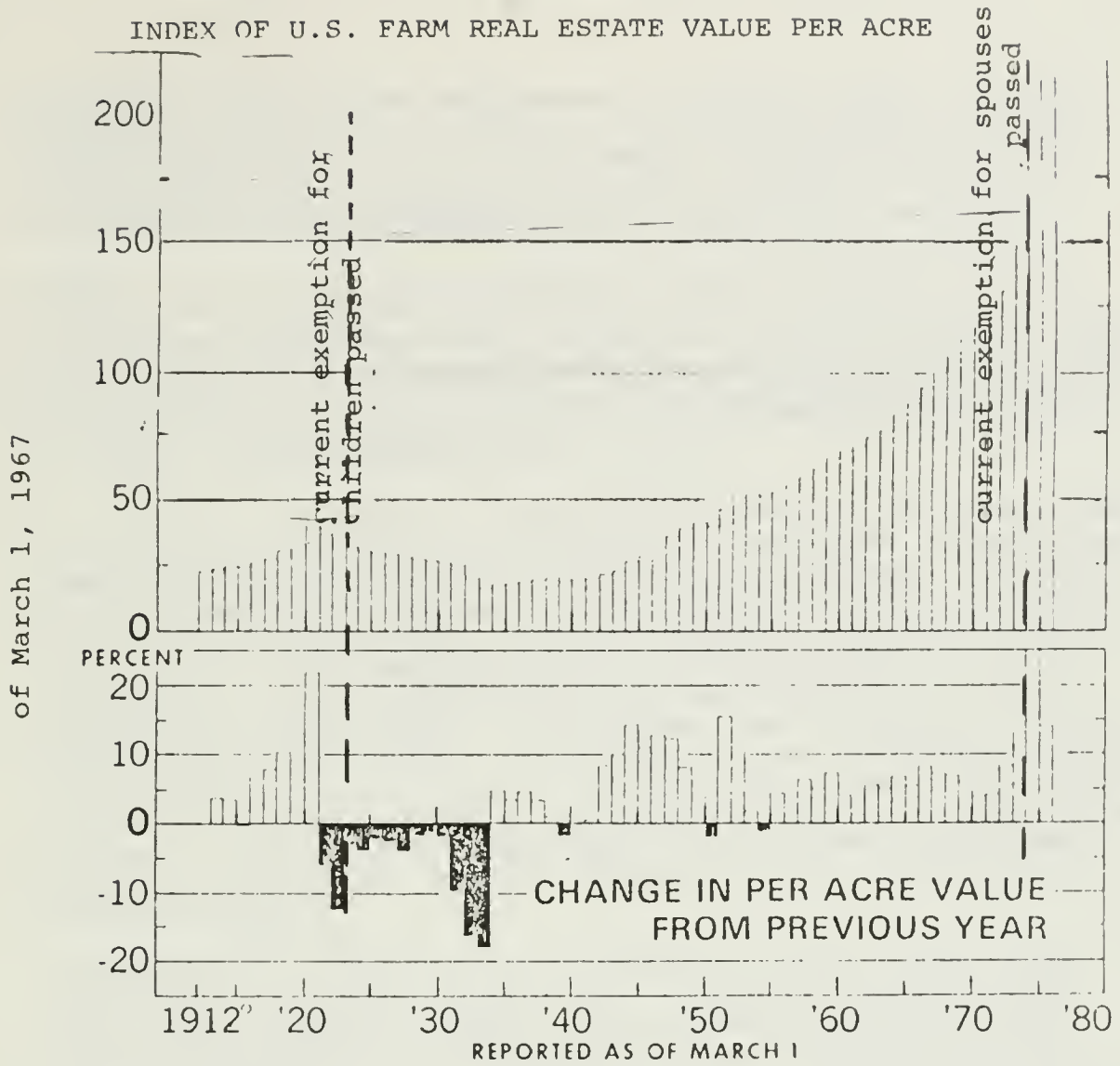
Montana citizens have expressed similar concerns as in other states. The exemption allowed adult children inheriting an estate has not increased since 1921. Inflation, as measured by the consumer price index, has increased the cost of commodities an average 300%. All evidence suggests that the value of estates has kept pace with these increases.[19]

This rapid increase is particularly noticeable in farm estates. According to U. S. Department of Agriculture statistics, the average value for the land and buildings on a Montana farm or ranch in 1955 was $77,000, in 1969 $150,000. Today the average value is close to $250,000. During these same years, the value of farm implements and machinery has increased 103%. Chart III illustrates the rise in farm real estate values since 1923 when the $2,000 exemption for adult children was established.[20]

Many farmers and ranchers have become concerned that their children will not be able to pay estate and inheritance taxes and have enough capital to keep the concern afloat. The U. S. D. A. estimates that 70% to 90% of farm estates are fixed in land and buildings, with few liquid assets.[21]

Montana's businesses may have experienced a similar rise in value during the same period, but census data is sparse for this sector of the economy. The majority of Montana retail,

CHART III



Source: USDA, Farm Real Estate Market Developments (January 1976); Montana Dept. of Agriculture.

NUMBER OF FARMS AND LAND IN FARMS, MONTANA 1962-1976

Year	Farms	Land in farms	Average size of farms
	Thousands	Thousand acres	Acres
1962	30.1	66,800	2,219
1963	29.5	66,800	2,264
1964	28.9	67,200	2,325
1965	28.4	66,700	2,349
1966	28.0	66,200	2,364
1967	27.6	65,700	2,380
1968	27.1	65,200	2,406
1969	26.7	64,700	2,423
1970	26.4	64,200	2,432
1971	26.0	63,700	2,450
1972	25.5	63,200	2,478
1973	25.1	62,700	2,498
1974	24.6	62,500	2,541
1975	23.5	62,400	2,655
1976	22.5	62,400	2,773

wholesale, and service businesses are family owned: 60% in 1969 were family proprietorships, 7% partnerships, and 33% corporations. Heirs inheriting family businesses may find state inheritance taxes as burdensome as heirs to farms during the next two decades.

Chart IV shows that adult children, whose exemption under current law is $2,000, inherit property more frequently than do spouses, whose exemption is $25,000. This is particularly true in estates distributing more than $65,000 to heirs. This data suggests that adult children are the most frequent heirs to family farms and businesses, yet their exemption is less than 1/12 that of spouses.[22]

To determine what effect inheritance taxes had upon small family businesses and farms, the subcommittee contacted the Montana Chamber of Commerce, Montana Hardware and Implement Association, Montana Tavern Association, Montana Farmer's Union, Montana Stockgrowers' Association, and the Montana Cattlemen's Association, as well as numerous attorneys, bank officers, and farm auctioneers. Each organization was asked whether, in its experience, family farms or businesses had to be sold to pay state inheritance taxes. In no case did the responding organization know of such a sale.[23] This finding seems to bear out the survey of 600 businesses and farms conducted by the Montana Tax Task Force in 1966. Less than 10% of those responding felt that inheritance taxes affected their operation or business decisions.[24]

Significantly, however, 70% of those who said in 1966 that inheritance taxes did affect their business decisions were farmers and ranchers. Many of the organizations answering the subcommittee's 1976 survey said that inheritance taxes had not caused the sale of family farms in the past but that they fully expected such forced sales to occur in the future. Two factors caused this change. Most important was the sharp rise in land prices in 1975 and 1976. These yearly increases, at over five times the average annual increase during the past two decades, coupled with the increasing mortgages carried by farms, will make estate and inheritance taxes the "last straw," in the opinion of one attorney handling farm and ranch estates. Statewide, bank officials note a "marked increase" in short-term borrowing by all ranchers and farmers and long-term debt growing, even among larger units which "historically have been free of debt." Most family farms and ranches are at present forced to borrow money to pay death taxes, the responding organizations noted. If the concern is already mortgaged to capacity, refinancing to pay the taxes may be impossible.[25]

CHART IV

CLASSES OF HEIRS PAYING TAXES ON VARYING INHERITED SHARES

Since the average age of Montana farm and ranch operations is 50 years, the effect of inheritance taxes on estates with rapidly increasing value and few liquid assets will be felt in the next ten to twenty years.[26]

V

ALTERNATIVES

In its study of ways to alleviate potential and existing problems caused by inheritance taxes, the subcommittee considered a great variety of alternatives. These alternatives are discussed in the following pages, with arguments for and against each proposal.

ESTATE TAXES

Estate taxes differ from inheritance taxes in that they tax the privilege of transferring property at death. Inheritance taxes tax the privilege of receiving property. Thus, the estate pays an estate tax, while the heirs pay inheritance tax.

Estate taxes are generally accepted as easier to administer than inheritance taxes and superior revenue producers. An estate tax is usually determined by multiplying the taxable estate by the tax rate; the computation does not depend on the number of heirs, their relationship to the decedent, or the amounts each heir receives as inheritance taxes do. Since the rate is applied against the whole estate, the amount of revenue produced is greater than when the smaller amounts received by each heir are taxed.

Critics of estate tax argue that since any death tax is, in reality, subtracted from the estate, it is more equitable to tax each heir on the amount he actually receives rather than tax the larger, undivided estate. Inheritance taxes, its supporters maintain, also recognize familial ties in that it gives larger exemptions to close relatives.[27]

The subcommittee discussed three bills to replace Montana's inheritance tax with different types of estate taxes:

A. Estate tax limited to federal credit. As noted on page 4 , section 91-4411, R.C.M. 1947, provides for a "pick up" tax, which allows Montana to collect the credit given by the federal government for state death taxes. This tax applies only to estates large enough to pay federal taxes in excess of $5,000.[28] As only 5% of all estates pay any federal income tax at all, the number of Montana estates paying the "pick up" tax is very small. The number may become even smaller under the Tax Reform Act of 1976, which allows larger exemptions and tax credits.

The subcommittee considered a bill to repeal existing inheritance taxes, retaining only the "pick up" or estate tax. The arguments for and against the change are sketched below.

ARGUMENTS PRO

Changing from an inheritance tax to this form of estate tax would greatly reduce filing procedures and tax computations. It would decrease the costs of calculating the tax and reduce the amount of court work.

An estate tax based upon the federal credit would:

(1) require no taxes over the federal estate tax;

(2) provide the greatest tax relief while maintaining the state's share of estate taxes;

(3) utilize to the fullest extent federal exemptions and deductions;

(4) remove the necessity of tax computation from approximately 2,300 estates per year;

(5) provide the full effect of the Uniform Probate Code for small estates; and

(6) require the least change in existing law.

ARGUMENTS CON

Any change from the existing tax system, including this change to collection of the federal credit, would:

(1) cause hardship to those who have probate plans based on the existing law;

(2) change existing law with regard to death taxation of joint interests, life insurance, and annuities; and

(3) decrease revenue produced by over 80%.

B. Estate tax based on federal taxable estate. Secondly, the subcommittee considered a bill to use the federal taxable estate as a basis for computing state death taxes. The Montana taxable estate would be determined by subtracting the federal estate taxes paid from the federal taxable estate. A tax rate of 2% would be applied against the first $30,000 of the resulting figure, increasing to 20% of any estate over $1.5 million. Once again, only estates subject to federal estate taxes would pay this state tax.

ARGUMENTS PRO

Changing from an inheritance tax to this form of estate tax would reduce filing procedures and tax computations, decrease costs of determining the tax and, in conjunction with the probate code, reduce court work.

An estate tax based on the federal taxable estate would:

(1) provide tax relief to many residents;

(2) provide the $60,000 exemption utilized by the federal government;

(3) remove the necessity of filing forms for approximately 2,300 estates per year;

(4) provide the full effect of the Uniform Probate Code for small estates;

(5) provide a credit for transfers within the last five years;

(6) allow the state to collect its share of the federal credit; and

(7) provide, in the rate structure, a means of increasing or decreasing state revenue as needed.

ARGUMENTS CON

To change from an inheritance tax to this form of an estate tax, or any estate tax, would:

(1) change existing law with regard to joint interests, life insurance, and some annuities;

(2) decrease the revenue available to the state by about 70%, under the rates discussed in the bill;

(3) not necessarily provide fewer forms or procedures in conjunction with the Uniform Probate Code; and

(4) require the same administrative personnel at the state level.

C. Estate tax modeled on the federal estate tax. The third type of estate tax the subcommittee considered was modeled on the federal estate tax. The methods of determining federal gross estate, joint interests, powers of appointment, and related matters would be identical with federal law. The

only differences would be the starting point of the taxation and its rate. For discussion purposes, $60,000 was used as a starting point and tax rates of 2% on taxable estates to $25,000, increasing to 14% on taxable net estates over $1,000,000.

ARGUMENTS PRO

Utilizing a copy of the federal estate tax would:

(1) assure consistent treatment of the same property for federal and state purposes;

(2) make available the exemptions and deductions in the federal estate tax; and

(3) assuming current revenue is still produced, create greater distribution of wealth while allowing the state to adjust the rate structure to meet current revenue needs.

ARGUMENTS CON

Changing to this form of estate tax would:

(1) increase the costs of administering estates;

(2) provide the state with limited control over the course of death tax legislation;

(3) change existing law with regard to joint interests, life insurance, and annuities;

(4) increase the number of forms and procedures required to probate an estate; and

(5) require periodic amendments to keep up with federal changes.

AMENDMENTS TO EXISTING INHERITANCE TAX LAWS

The subcommittee also considered various amendments to the inheritance tax system now in existence.

A. Larger exemptions.

The subcommittee discussed three alternate exemption schedules to ease the tax burden for small estates.

Higher schedules would lower tax revenue by the following amounts:

Alternate Schedules (000's) spouse, minor child, adult child				Annual Estimated Loss	Percent Loss of Existing Tax
#1	$30	$10	$5	$1,000,000	-17.6%
#2	$35	$12	$6	$1,160,000	-20.4%
#3	$40	$15	$7	$1,300,000	-22.9%

However, higher exemption schedules would eliminate inheritance taxes for nearly 70% of all estates. Since most estates are divided among multiple heirs, higher exemptions would cover heirs' shares in estates of $40,000 or less.

B. Deferred payment.

At present, inheritance taxes are due 18 months after death. A discount of 5% is allowed if the taxes are paid before this date. The subcommittee requested that information be gathered on the effects of allowing installment payment of inheritance taxes on a family farm or business over a period of years as in federal law. A moderate interest rate would be charged on the taxes due.

Many national studies of death tax agree that a longer payment period mitigates many of the hardships caused by inheritance taxes. Since most heirs to farms and ranches must borrow money to pay death taxes at interest rates of 10% or higher, a provision for extended payment with a 6% interest rate could be very beneficial.[29]

Members of the Montana Uniform Probate Code Committee pointed out, however, that deferred payments could cause problems for both the Department of Revenue and heirs. The Department would have the obligation to determine which heirs were eligible for the provision, would have increased accounting, and would need to remain in contact with the heir or personal representative of the estate during the period of payment. Enforcing a lien against the property over the extended period would be difficult if the property is divided among many heirs. These complications would probably require extra administrative staff. Moreover, heirs inheriting corporate stocks or real estate, who would be ineligible for the provision if the assets were not a family business, could argue that they were discriminated against.[30]

The subcommittee discovered that the number of Montana heirs using installment payments for federal estate taxes has been low. The requirement that bond for the amount of tax be posted seems to discourage its use, as does an IRS code that the estate's administrator is personally liable for the tax over the entire period of payment.[31]

C. Lowering Bond Requirements.

While investigating the effects of deferred payment and tax liens and bonds made necessary by this amendment, the subcommittee discussed section 91-4419, which requires the personal representatives of minor heirs choosing to defer inheritance taxes until the age of majority to file a penalty bond for three times the amount of taxes due. At present, the cost of a bond for deferred inheritance taxes is 1.5% of the total amount due, renewable every three years. Thus, the bond for deferring $10,000 in inheritance taxes twelve years would be $1,800.[32]

Recognizing that section 91-4415 imposes a lien on all property on which inheritance taxes are due, the subcommittee considered a proposal to require bond on only that property against which a lien is unenforceable. The subcommittee learned, however, that bonding companies are reluctant to write this type of bond.

Surety bonds for inheritance taxes require collateral, usually in the form of a lien upon the property on which the tax is due. Bonding companies argue that if the state cannot enforce a lien against certain property, the bonding company faces the same problem. In such cases, they call the bond a financial guarantee bond rather than a surety bond, because it lacks adequate collateral. Most heirs would have difficulty qualifying for a financial guarantee bond. Moreover, Section 91A-3-603 of the Montana Uniform Probate Code removed the necessity in most cases for the administrator or executor (now called personal representatives) of an estate to file a bond with the state. This replaced section 91-1702 that required such persons to file, at the court's discretion, a bond for the value of the estate until the taxes were paid. The intent of this change was:

> "that the court and registrar are [no longer] responsible for seeing that personal representatives perform as they are supposed to perform. Rather, performance is coerced by the remedies available to interested persons."

Bonding companies say that the proposed amendment coupled with the present language in 91A-3-603 would make their position very difficult. They feel that they would have little recourse or chance of recovery if an heir or personal administrator defaulted on tax payment.

Another difficulty caused by an amendment requiring bond only for certain types of property is that currently the inheritance tax for the transfer of an individual piece of property is not computed separately. The tax is calculated for the transfer

of the distributive share as a whole. At least one additional section setting down a procedure for separating the taxes on the transfer of property would be necessary if the amendment were passed.[33]

The subcommittee then rewrote the amendment to require bond for the inheritance taxes due on the transfer of all property, but only for the amount of the tax. This amendment would reduce the bond on $10,000 of tax deferred twelve years to $600. Since default on bonds for death taxes has never occurred in Montana on either the state or federal level, this risk to the state in lowering the size of the bond seems slight.[34]

D. Alternate Methods of Valuing Property.

The subcommittee also considered a bill changing the method of valuing agricultural land. At present, Montana's inheritance tax laws and federal estate tax laws require that all property be valued for tax purposes at its "clear market value." Farmland on the edge of growing cities must, therefore, be valued as residential lots rather than as crop or grazing land. The high value of such land in an estate makes inheritance taxes higher and may encourage the heir to develop rather than farm it.

The subcommittee examined a bill allowing the valuation of agricultural land on its productive use. In the bill, "agricultural land" was required to meet the same qualifications as exist in property taxation.

Congressional supporters of this concept maintain that this provision would be helpful in keeping farmland in families and simple to administer. County assessors' property tax rolls already contain assessments of the productive use of all agricultural land. The federal Tax Reform Act of 1976 authorizes the valuation of agricultural land at productive capacity.

Critics brand the proposal discriminatory, maintaining that small businesses do not benefit from this proposal. They predict that wealthy individuals would buy farms in order to pass more wealth to their heirs. They also point out that the state has no guarantee that heirs, having paid lower inheritance taxes on the agricultural land, will not sell it as residential or commercial property and make a large profit.[35] Lastly, the change in valuation from market value to productive capacity would cost the state approximately $1.8 million in revenue.[36]

In discussing the fiscal impact of amendments to inheritance tax laws, a note of explanation is necessary. New statutes

affect the estates of only those dying after the effective date of the bill. Since inheritance taxes are not due for 18 months after the death, the fiscal impact of the bill will be delayed almost two years. If the value of estates continues to keep pace with inflation, any predicted drop in revenue may not, in fact, occur or would be lessened because of this delay.[37]

VI

SUBCOMMITTEE DELIBERATIONS

At its final meeting on October 1, 1976, the subcommittee voted 5-2 (one member absent)* to recommend a bill to the legislature which

(1) raised the exemptions for surviving spouses to $40,000, to $15,000 for minor lineals, to $7,000 for adult lineals, and $1,000 to brothers or sisters or sons- and daughters-in-law;

(2) allowed the first $25,000 of value over the exemption to be taxed at the primary rate; and

(3) lowered the bond required for personal representatives of minor heirs choosing to defer taxes.

This bill appears in Appendix A.

The subcommittee reached this decision after detailed consideration of the proposed alternatives at the preceding four meetings. Estate taxes were seriously considered at the first two meetings because they eliminated taxes for small and medium-sized estates. Members finally rejected the alternative at the November 23 meeting on the grounds that it would involve a major legislative change which could, in fact, be achieved merely by raising the exemptions in existing inheritance tax law.

At the final two meetings, the subcommittee discussed various drafts amending the inheritance tax sections. The advice of the Inheritance Tax Division and the State Bar Association was sought and discussed. The subcommittee also received the testimony of concerned ranchers and farmers. Members early chose an option which increased exemptions dramatically to reflect the rise in the value of estates caused by inflation. The subcommittee also accepted the Inheritance Tax Division suggestion that the exemption be removed from the first $25,000 of the taxable estate subject to the primary rate, thereby lowering the total tax.

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*For: Senators Watt and Norman and Representatives Fagg, Williams, Yardley. Against: Senator Mathers and Representative Fabrega. Absent: Senator Aber.

Deferred payments were included in several drafts of the subcommittee's bill because this provision seemed to offer tax relief to heirs to family farms and businesses with few liquid assets. The subcommittee decided, however, to reject the alternative on the advice of the Montana Uniform Probate Code Committee. That committee pointed out the numerous legal conflicts, possible constitutional questions, and administrative difficulties caused by the provision. The subcommittee considered the fact that few Montana heirs take advantage of the federal installment payments and decided that the problems created outweighed the advantages.

In discussing deferred payments, the subcommittee considered the subject of bonds required for deferred taxes in minor's inheritances and determined that the bond required was too high. It voted to require bond only for the amount of tax due, not for three times that amount.

Before taking a final vote on the bill, the subcommittee submitted the draft to both the Uniform Probate Code Committee and the Inheritance Tax Division for comments on the language of the bill and any possible conflicts with the Uniform Probate Code. Their suggestions were accepted at the October 1 meeting.

VII

MINORITY REPORT

During its study, the Subcommittee was presented with evidence showing that: (1) state inheritance taxes are becoming a serious burden for family farms; (2) that the inheritance tax system is unnecessarily complicated and conflicts appear in several sections of the law; and (3) that the money produced by the tax is a minor source of revenue for the state.

The Subcommittee had the opportunity to adopt a bill reducing the tax burden and simplifying the tax procedure. Members voted, however, only to raise exemptions so slightly that few heirs benefit and to retain the present antiquated tax system virtually intact.

In particular, the $7,000 exemption allowed to adult children under the Subcommittee proposal does nothing to alleviate tax problems facing sons and daughters inheriting family farms. Under the Subcommittee's bill, state inheritance taxes may become heavier for these heirs than federal estate taxes, since the federal Tax Reform Act of 1976 doubled tax credits and allowed family farms and businesses to be valued at productive capacity rather than at market value.

We believe, therefore, that the Subcommittee should have used its opportunity to repeal the entire inheritance tax system and tax only the credit allowed by the Internal Revenue Service to heirs paying substantial amounts of federal estate tax, as is now done under Section 91-4411. A bill embodying these changes appears in Appendix B.

The major effects of this bill would be to:

(1) eliminate any state death taxes for over 90% of all Montana heirs;

(2) remove the burden of state death taxes for most family farms and businesses;

(3) tax only very large estates;

(4) lower the administrative costs of death taxes; and

(5) lower state revenue by about $5,000,000 a year.*

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* The exact figures on the size of estates taxes and the revenue loss were not available at the time of writing, since the federal regulations governing the Tax Reform Act of 1976 had not yet been adopted.

The existing "pickup" tax, as the tax on state credit is called, was enacted by the Montana legislature in 1933 to collect the maximum amount of credit allowed by the federal government for state death taxes. This tax does not increase the amount heirs pay in any way. If a state does not have a "pickup" tax, the federal government disallows the tax credit and, thus, collects additional taxes for the amount that would have been paid to the state. The only effect of the state provision is to insure that the extra amount is paid to the state government rather than the federal.

The "pickup" tax is only collected on very large estates -- those paying substantial amounts of federal tax. The Federal Tax Reform Act of 1976 established a series of tax credits that exempt over 90% of Montana estates from any federal tax. Estates passing to adult children must be in excess of $120,667 after allowable deductions to pay any federal tax, and this lower limit will increase to $175,625 by 1981. Spouses inheriting estates are allowed $250,000 of the value of the estate tax-free. Heirs to family farms and businesses may reduce their taxable value up to $500,000 by valuing the estate on its productive capacity rather than its market value. Very few Montana heirs, thus, would pay any "pickup" tax.

The repeal of existing inheritance tax laws would greatly reduce both the administrative and compliance costs of death taxes. Since the Internal Revenue Service calculates the amount of credit given a state, the Department of Revenue would need fewer employees to oversee the collection of the "pickup" tax. County courthouses would also be freed of some of the details of probate. Heirs would less frequently need the assistance of attorneys and accountants to close an estate.

In relieving heirs of the burden of inheritance taxes, Bill B would, of course, reduce revenue from death taxes significantly -- by about 85% in 1979, rising to 90% by 1983. This would be a revenue loss of approximately $5,100,000 a year. This loss may, however, be balanced against the declining importance of inheritance tax to the state's revenue: in 1970, the tax produced 4.5% of the state's revenue but only 3.6% in the current year. By 1979, this percentage, if the law is unchanged, may be down to 3.0%. Revenue raised from new sources such as the coal tax diminish the impact of this loss in revenue.

In conclusion, the advantages to Montana citizens by the elimination of inheritance taxes far outweighs the loss of revenue.

Senator William L. Mathers

Representative W. Jay Fabrega

VIII

FOOTNOTES

[1]Eugene Oakes, "Development of American State Death Taxes" in the Iowa Law Review, Vol. 26, 1941, pp. 450-480. Business Research Bureau, Death Taxation in the American States (University of South Dakota: 1974), pp. 1, 78-80.

[2]Dr. Layton Thompson, "The Montana Tax System -- Some Historical Highlights" in Montana Tax Study Working Papers, part III, Section C, p. c1. Oakes, pp. 457-8n. Chapter , S.L. 1897. Gelsthorpe v. Furnell 20 Mont. 299 (1897), In re Tuohy's Estate 35 Mont. 431 (1907).

[3]Oakes, pp. 468.

[4]Douglas Jerome Wold, "The Montana Death Taxes" (George Washington University, unpublished Masters of Law thesis: 1969), p. 7.

[5]Thompson, pp. C4-5, C-12-13.

[6]The 1921 act, due to legislative oversight, failed to tax transfers to children over $25,000. In 1923 the legislature repealed the act and substituted another which had the same structure but included a tax rate for transfers to lineals over $25,000. In passing the new act, the legislature increased the widow's exemption to $17,500, a husband's to $5,000, and kept the exemption for lineals at $2,000. Wold, pp. 7-8.

[7]State Board of Equalization, Biennial Report, 1930-1932, p. 4.

[8]Wold, pp. 137-144. Information from Thomas Stoll, Chief, Inheritance Tax Division, Department of Revenue, 18 October 1976.

[9]Quoted in the Washington Post, 15 March 1976.

[10]John H. Wicks, "Economic Analysis of Montana's Tax Structure" in Tax Study Task Force Working Papers, part VI, p. 22.

[11]Carl S. Shoup, Federal Estate and Gift Taxes (Washington: Brookings Institution: 1966).

[12]Calculations and predictions involving inheritance taxes must necessarily be imprecise: the taxes from a single very large estate can make averages meaningless.

[13]Information from Thomas Stoll, 24 October 1975. Michael Killworth and John Wicks, "The Compliance and Administrative Costs of Montana Taxes" in Tax Task Force Working Papers (1966), Appendix 7, p. 28.

[14]Ibid., pp. 28-30.

[15]HB 372, Chapter 424, S.L. 1975.

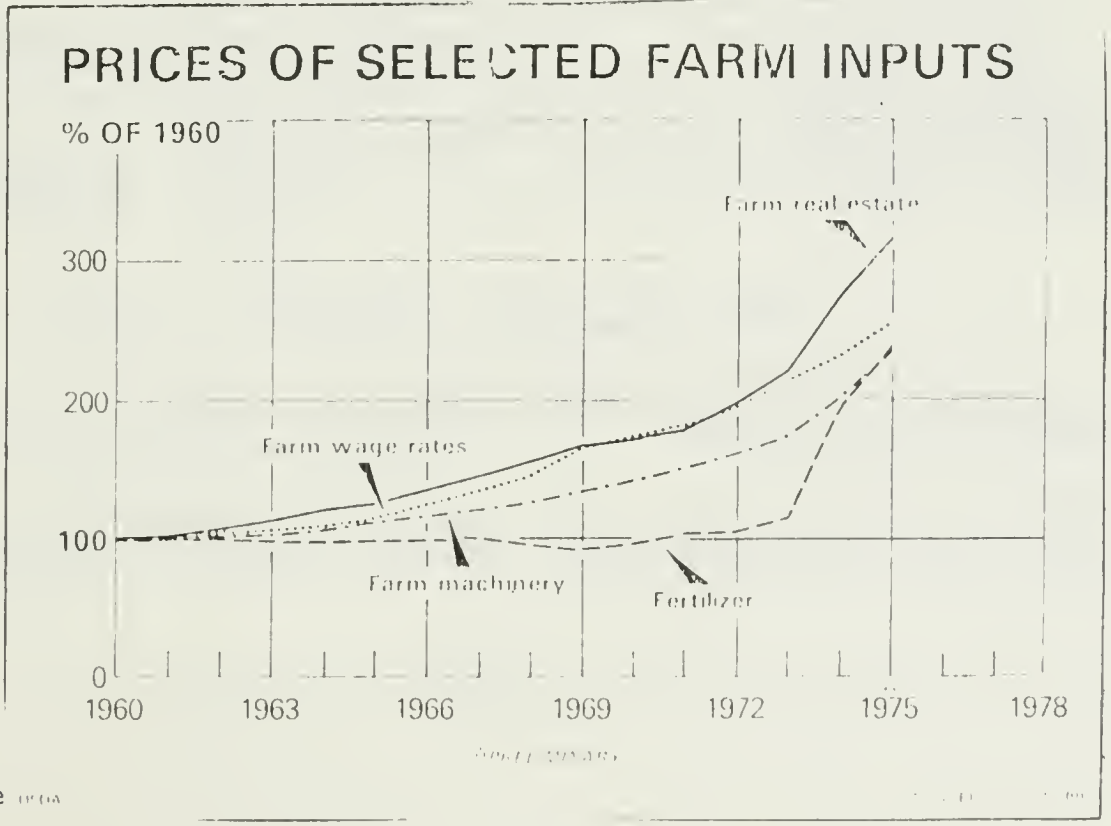
[16]Information from Tom Stoll, 15 March 1976. This information was compiled from the returns of August 1974 - 191 cases that paid 1/12 of the total inheritance taxes of that year.

[17]Wold, p. 158. Wold's thesis contains the only statistical analysis of Montana's inheritance taxes ever made. He notes the "paucity of available statistics with which to conduct such a study" (p. 146). The lack of such statistics, complete with historical data, hampered this study, also.

[18]Great Falls Tribune, 16 February 1976, Minnesota Agriculture, 8 April 1976.

[19]The Handbook of Basic Economic Statistics, Vol. XXX, No. 1 (Washington: Economic Statistics Bureau: January 1976), pp. 101-102.

[20]U. S. Department of Commerce, Statistical Abstract of the United States, 1974, p. 601. U. S. Department of Agriculture, Farm Real Estate Market Developments, February 1976, p. 3. U.S.D.A. Farm Prices, 1975.



the

[21]Information from Thomas Dundas, Jr., Assistant Administrator, Research and Information System Division, Department of Community Affairs. Since 1972, agricultural land prices have been climbing more rapidly than commercial land prices in Montana. U. S. Department of Commerce, 1972 Census of Selected Service Industries, 1972 Census of Wholesale Businesses, 1972 Census of Retail Businesses.

[22]I compiled this chart from the sample of 191 estates used as the basis of all predictions in this study. Since estates may be left to several children, but only one spouse, the children may claim more than one $2,000 exemption.

[23]The responses to this question are on file at the Legislative Council.

[24]John Wicks et al, "Effect of Montana Taxes on Decisions of Business Firms" in Tax Task Force Working Papers (1966), Appendix 5, pp. 5-7.

[25]Letter from Crowley, Kilbourne, Haughey, Hanson & Gallagher, 1 October 1975.

[26]U. S. Department of Commerce, 1972 Census of Agriculture.

[27]Wold, pp. 2-5.

[28]Information from Thomas Stoll.

[29]North Central Regional Extension Service, Death and Taxes, September 1975, pp. 10, 15. U. S. Department of Agriculture, Economic Research Service, "Increasing Impact of Federal Estate and Gift Taxes on the Farm Sector," Report No. 242. Congressional Research Service, Federal Estate and Gift Taxes, 1974, pp. 50-51. Lawyers and bank trust officers in Montana, replying to a query on possible reforms of inheritance tax, agreed.

[30]Letter from Uniform Probate Code Committee to the Subcommittee on Taxation, 14 September 1976.

[31]Information from Robert Wompler, Attorney, Internal Revenue Service. 17 February 1976. Federal Codes Annotated, Title 26, Section 6161.

[32]Information from Joanne Gross, Jensen Insurance Company, 27/5/76, and Gordon Buckland, Buckland Agencies, 25/5/76 and 26/5/76.

[33]Interview on 27/5/76 with Gene MacDonald, Underwriting Department, and Attorneys of the Western Surety Company, South Dakota, the company which underwrites most of the bonds for Montana. He and his staff pointed out the difficulties discussed. Section 91A-3-605 does provide that interested persons having a claim of over $1,000 may require bond from personal representatives, but this section contains other qualifications. Editorial Board Comment to section 91A-3-603 by Allen Smith and Company.

[34]Information from Robert Wompler, 17 February 1976, and Thomas Stoll, 15 March 1976.

[35]Section 91-4407, R.C.M. 1947. In re Estate of Power, 156 M 100, the court defined clear market value as the "net value in the open market as determined by the price a willing but not obligated buyer would pay and a willing but not obligated seller would accept, with both parties knowing all pertinent facts affecting value." These arguments are abstracted from a variety of sources including Death and Taxes, pp. 7-8; Federal Estate and Gift Taxes, pp. 52-53; "Increasing Impact of Federal Estate and Gift Taxes on the Farm Sector," passim. Death Tax Policy, pp. 10-15.

[36]Letter from John Clark, Administrator, Research Division, Revenue Department, 25 March 1976.

IX

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Woods, W. Fred, "Death Tax Policy: Implications for Rural Land-Use" presented to Conference on Rural Land-Use Policy in the Northeast at Atlantic City, New Jersey, 3 October 1974.

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND UPDATE THE MONTANA INHERITANCE TAX WITH REGARD TO JOINT ESTATES AND EXEMPTIONS; AMENDING SECTIONS 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, AND 91-4453, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 91-4405, R.C.M. 1947, is amended to read as follows:

"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, is inscribed in ~~co-ownership~~ coownership form, ~~or~~ held by two or more persons in joint tenancy ~~by--two--or--more--persons,~~ or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of ~~decedent's interest, one-half or other proper fraction, as evidenced by the written instrument~~

~~creating--the--same,--as--though--the--property-to-which-the transfer-relates-belonged-to-the-joint-tenants,--tenants--by the--entirety,--joint--depositors,--holders--in-co-ownership form,-or-persons,-as-tenants-in-common,-and--had--been,--for inheritance--tax--purposes,--bequeathed--or--devised--to-the survivor-or-survivors-by-will,-except-such-part--thereof--as may-be-shown-to-have-originally-belonged-to-the-survivor-and never--to--have--belonged-to-the-decedent.~~ the full value of the property, except that portion originally owned by the survivor.~~This--section--shall--not-be-construed-to-repeal-or modify-the-provisions-of-section-91-4402.~~"

Section 2. Section 91-4409, R.C.M. 1947, is amended to read as follows:

"91-4409. Primary rates, where remaining amount not in excess of $25,000.00. ~~When-the-property--or--any--beneficial interest--therein-passes-by-any-such-transfer-to-any-person, institution,-association,-corporation-or-body-politic,-where the-amount--of--the--property--shall--exceed--in--value--the exemption--hereinafter--specified,--and--shall-not-exceed-in value-twenty-five-thousand--dollars--($25,000.00),--the--tax hereby--imposed--shall-be:~~ The exemptions allowed by 91-4414 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value

of the remaining amount of the total value of property or beneficial interests at the following rates:

(1) ~~Two-per-cent.--Where~~ at the rate of 2% of the clear value of the interest in property passing to a person if the person ~~or persons~~ entitled to any beneficial interest in such property ~~shall be~~ is:

(a) the husband, wife, lineal issue, or lineal ancestor of the decedent~~,~~; ~~or~~

(b) any child adopted as such in conformity with law~~,~~ or any child to whom such decedent for not less than ~~ten~~ (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided~~,--however,~~ such relationship began at or before the child's ~~fifteenth--(15)~~ 15th birthday~~,~~ and was continuous for ~~ten~~ (10) years~~,~~; or

(c) any lineal issue of such adopted or mutually acknowledged child~~,~~; ~~at the rate of two per cent (2%) of the clear value of such interest in such property passing to such person.~~

(2) ~~Four per cent.--Where~~ at the rate of 4% of the clear value of the interest in property passing to a person if the person ~~or persons~~ entitled to any beneficial interest in such property ~~shall be~~ is:

(a) the brother or sister or a descendant of a brother or sister of the decedent~~,~~;

(b) a wife of a son~~,~~ or the husband of a daughter of

the decedent~~;~~ ~~at the rate of four per cent (4%) of the clear value of such interest in such property passing to such person~~.

~~(3) Six per cent.~~ Where at the rate of 6% of the clear value of the interest in property passing to a person if the person ~~or persons~~ entitled to any beneficial interest in such property ~~shall be~~ is the uncle, aunt, or first cousin of the decedent~~;~~ ~~at the rate of six per cent (6%) of the clear value of such interest in such property passing to such person~~.

~~(4) Eight per cent.~~ Where ~~the person or persons~~ at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property ~~shall be~~ is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated~~;~~ ~~or shall be~~

(b) is a stranger in blood to the decedent~~;~~ or

(c) ~~shall be~~ is a body politic or corporate~~.~~ ~~at the rate of eight per cent (8%) of the clear value of such interest in such property passing to such person, institution, association, corporation or body politic.~~"

Section 3. Section 91-4410, R.C.M. 1947, is amended to read as follows:

"91-4410. Other rates, where remaining amount in excess of $25,000.00. The ~~foregoing~~ rates in ~~section~~ 91-4409

are for convenience termed the primary rates~~.~~ When the amount of the clear value of ~~such~~ the remaining amount of the property or interests exceeds ~~twenty-five--thousand dollars-($25,000.00)~~, the ~~rates~~ rate of tax upon such excess shall be as follows:

(1) ~~Rate--where--amount-$25,000.00-to-$50,000.00-Upon~~ upon all in excess of ~~twenty-five---thousand---dollars ($25,000.00)~~ and up to ~~fifty-thousand-dollars-($50,000.00)~~, two ~~(2)~~ times the primary ~~rates~~ rate;

(2) ~~Rate--where-amount-$50,000.00-to-$100,000.00-Upon~~ upon all in excess of ~~fifty-thousand--dollars--($50,000.00)~~ and up to ~~one-hundred-thousand-dollars-($100,000.00)~~, three ~~(3)~~ times the primary ~~rates~~ rate;

(3) ~~Rate-where-amount-over-$100,000.00-Upon~~ upon all in excess of ~~one--hundred-thousand-dollars-($100,000.00)~~, four ~~(4)~~ times the primary ~~rates~~ rate."

Section 4. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"91-4414. Exemptions~~.~~ ~~from--first---$25,000.-----The following-exemptions-from-the-tax-are--hereby--allowed,--the~~ (1) The exemption allowed to each person, institution, association, corporation~~,~~ and or body politic to shall be taken ~~out-of-the-first-twenty-five-thousand-dollars-passing by--any--such--transfer---to---such---person,---institution, association,--corporation--or--body--politic~~ as provided in

91-4409~~.~~.

~~(1)~~ (2) ~~Transfers~~ The following transfers are totally exempt~~:~~:

(a) ~~All~~ all property transferred to the state or any of its institutions~~,~~ or to municipal corporations within the state for strictly county, city, town, or municipal purposes~~,~~ ~~shall be exempt~~;

(b) ~~All~~ all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust~~,~~ organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual~~,~~ and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, ~~shall be exempt~~, if any of the following conditions is present:

~~(a)~~ (i) ~~The~~ the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

~~(b)~~ (ii) ~~The~~ the property transferred is limited for use within this state;

~~(c)~~ (iii) ~~In the event that~~ the society, corporation,

institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, and at the date of the decedent's death any one of the following conditions existed:

~~(i)~~ (A) ~~The~~ the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

~~(ii)~~ (B) ~~The~~ the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

~~(iii)~~ (C) ~~The~~ the society, corporation, institution,

foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(3) The clear value of one-half of the property distributed or passing to decedent's surviving spouse is exempt.

~~(2)~~ (4) ~~$25,000; $5,000; $2,000 exempt, when. Property of the clear value of twenty-five thousand dollars ($25,000)~~ The following amounts are exempt:

(a) property of the clear value of $40,000 transferred to the ~~wife or to the husband~~ surviving spouse of the decedent~~,~~; ~~five thousand dollars ($5,000)~~

(b) property of the clear value of $15,000 transferred to:

(i) each minor lineal issue of the decedent~~, or~~;

(ii) any minor child adopted as such in conformity with law~~, or~~;

(iii) any minor child to whom such decedent for not less than ~~ten (10)~~ years prior to such transfer stood in the mutually acknowledged relation of a parent, provided~~,~~ ~~however,~~ such relationship began at or before the child's ~~fifteenth (15)~~ 15th birthday~~,~~ and was continuous for ~~ten~~

~~(10)~~ years~~,~~; or

(iv) any minor lineal issue of such adopted or mutually acknowledged child~~,~~; and ~~two-thousand-dollars-($2,000)~~

(c) property of the clear value of $7,000 transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in ~~the-first--subdivision--of--section~~ 91-4409(1) ~~shall-be-exempt.~~

(5) Any child of ~~the~~ a decedent ~~shall-be~~ is entitled to credit for so much of the tax paid by ~~the-wife-or-husband~~ the decedent's spouse as applied to any property which ~~shall~~ is thereafter ~~be~~ transferred by or from such ~~husband-or-wife~~ spouse to ~~any-such~~ the child, provided the ~~husband--or--wife~~ spouse does not survive ~~said~~ the decedent to exceed ~~ten~~ 10 years.

~~(3)~~ (6) ~~$500-exempt-when.~~ Property of the clear value of ~~five-hundred-dollars~~ $1,000 transferred to each of the persons described in ~~the--second--subdivision--of-section~~ 91-4409(2) ~~shall-be~~ is exempt.

~~(4)~~ (7) ~~Property-without-the-state--exempt--when.~~ No tax ~~shall~~ may be imposed upon any tangible personal property of a resident decedent when such property is located without this state~~,~~ and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and ~~which~~ the tax has actually been paid, secured~~,~~

or guaranteed, provided such property is not without this state temporarily ~~nor~~ or for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 5. Section 91-4416, R.C.M. 1947, is amended to read as follows:

"91-4416. Discount -- interest. (1) If ~~such~~ the tax is paid within ~~eighteen-(18)~~ months ~~from-the--accruing--thereof~~ of the death of the decedent, a discount of ~~five-per-cent (5%)~~ shall be ~~allowed-and~~ deducted therefrom. The deduction of this discount of ~~five-per-cent-(5%)~~ shall be accomplished by paying within the ~~eighteen-(18)~~-month period from the date that the tax accrues an amount equal to ~~ninety-five-per cent-(95%)~~ of the total tax declared due by the person making payment.

(2) If such tax is not paid within ~~eighteen-(18)~~ months ~~from--the--accruing--thereof~~ of the death of the decedent, interest shall be charged and collected thereon at the rate of ~~ten--per-cent-(10%)~~ ~~per-annum~~ a year from the time the tax accrued; unless ~~by--reason~~ because of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, ~~such~~ the tax ~~shall~~ is not be determined and paid as herein provided, in which case

interest at the rate of ~~six-per-cent-(6%)~~ shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which time ~~ten-per--cent--(10%)~~ shall be charged~~;~~. ~~provided-that-litigation~~ Litigation to defeat the payment of the tax ~~shall-not-be-considered~~ is not necessary litigation. ~~In-all-cases-when~~ When a bond ~~shall-be~~ is given under ~~the-provisions-of-section~~ 91-4419, interest shall be charged at the rate of ~~six-per-cent-(6%)~~ after ~~one (1)~~ year from the date of death~~,~~ until the date of payment thereof."

Section 6. Section 91-4419, R.C.M. 1947, is amended to read as follows:

"91-4419. Bond for deferred payment of tax. ~~(a)~~ Any beneficiary of any property charged with a tax under ~~this act~~ 91-4401 through 91-4406~~,~~ and any ~~executors, administrators~~ personal representative and or ~~trustees~~ trustee ~~thereof~~ of the estate~~,~~ may elect, within ~~eighteen~~ 18 months from the date of the death of decedent or transfer ~~thereof-as-herein-provided~~ of the property, not to pay such tax until the person ~~or--persons~~ beneficially interested ~~therein-shall come~~ comes into the actual possession or enjoyment thereof. The person ~~or-persons~~ so electing shall give a bond to the state ~~in-a-penalty-of-three-times~~ for the amount of ~~any-such~~ the tax, with such sureties as the district court of the proper county or the ~~state~~ department

of revenue, as the case may be, may approve, conditioned for the payment of ~~such~~ the tax and interest thereon~~--at--such time--or--period--as~~ at the time the person ~~or persons~~ beneficially interested therein ~~may--come~~ comes into the actual possession or enjoyment of ~~such~~ the property~~.~~ ~~which~~ The bond shall be filed in the district court, or in the office of the state treasurer as the case may be. Such bond must be executed and filed and a full return of such property upon oath made to the district court or the department of revenue within 18 months from the date of the death of decedent or transfer as herein provided, and such bond must be ~~renewed every 5 years, and said deferred tax shall bear interest at 6% per annum after such 18 months~~ kept in force until the tax and interest are paid in full."

Section 7. Section 91-4453, R.C.M. 1947, is amended to read as follows:

"91-4453. Definitions. (1) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any

interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. "Intangible" or "intangible property", when used in this act without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured. The words "county treasurer", "public administrator", and "county attorney", as used in this act shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) The terms "joint" and "jointly" as used in this chapter refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable."

-End-

APPENDIX B

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPLACE THE INHERITANCE TAX WITH AN ESTATE TAX BASED UPON THE STATE CREDIT ALLOWED IN THE FEDERAL ESTATE TAX; REPEALING CHAPTER 44 OF TITLE 91."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the Montana Estate Tax Act.

Section 2. Intent. The intent of this chapter is to provide a method of tax relief while allowing this state to collect the maximum tax credit against the federal estate tax imposed with respect to a decedent's estate.

Section 3. Imposition of estate tax. There is an estate tax imposed upon the transfer of the estate of every decedent leaving an estate subject to the federal estate tax imposed by the United States that, in whole or in part, has a taxable situs in this state.

Section 4. Taxable situs. For purposes of this tax, property located witnin the state of Montana or its jurisdiction and intangible property possessed by a resident of this state are subject to the estate tax.

Section 5. Amount of tax. The estate tax imposed upon

each estate is equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state.

Section 6. Who collects. The estate tax shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer in the state general fund.

Section 7. When payable. The estate tax is payable to the county treasurer of the county in which the personal representative of the estate is appointed or to the department of revenue at the same time or times at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as the United States tax.

Section 8. Liability. Personal representatives, trustees, and grantees under a conveyance made during the grantor's life and taxable hereunder are liable for estate taxes, with interest, until those taxes have been paid.

Section 9. Lien. Estate taxes and interest are a lien on the property for a period of 10 years from the date of death, unless sooner paid.

Section 10. Filing returns -- general -- supervised administration -- unsupervised administration. (1) When the possibility exists that the estate of a decedent is liable

for payment of death taxes under the United States estate tax laws, the personal representative shall file with the district court of the county in which the estate would be administered and with the department of revenue the following:

(a) duplicates of the United States estate tax returns; and

(b) a certificate or other evidence from the internal revenue service or its successor indicating the amount of the United States estate tax as computed by that agency.

(2) In supervised administration of an estate, the district court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining that tax and the amount thereof so due and payable.

(3) In other than supervised administration of an estate, the personal representative shall file with the department of revenue the documents listed in subsection (1) of this section and any other pertinent information necessary to establish the amount of the state estate tax. If there is no personal representative, the person in control of property subject to estate tax shall file the documents required of the personal representative.

Section 11. Credit for tax paid another state. The amount of tax due under this act shall be credited with the

lesser of the amount of the death tax paid another state and credited against the federal estate tax or a pro rata share of the credit allowed the several states by federal estate tax law, when the following conditions apply with regard to a decedent's property:

(1) it has a taxable situs in Montana;

(2) a death tax is levied upon it in another state for which a credit is allowed by federal estate tax law; and

(3) there is no provision in the taxing state that allows the property to be taxed in the state of decedent's domicile.

Section 12. Repeal. Sections 91-4401 through 91-4467 are repealed.

Section 13. Effective date and applicability. This act is effective on July 1, 1978, and applies to the estate of any person who dies on or after that date.

-End-